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# NIK MOHD SUHAIMI AHMAD GHAZALI v. SITI FAIRUZ SHAMSURI & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD BACHE J
[SUIT NO: WA-21NCVC-79-09-2018]
B 30 NOVEMBER 2023

**Abstract** – *In spite of their duty to act within the perimeters of the powers accorded to them and the protection to be given to suspects under custody, cases of harm and abuse committed by officers of investigating and enforcement agencies are prevalent. This case underscores the need to recognise the tort committed by these officers in handling suspects/arrestees under their custody, especially in cases involving white-collar crimes and the importance of exercising restraints and recognising humanity and human rights of white-collar crime suspects.*

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***TORT:*** *Abuse of process – Malicious process – Claim against Malaysian Anti-Corruption Commission ('MACC') and its officers – Claimant investigated, arrested and detained by MACC – Claimant harassed, threatened, intimidated and induced to plead guilty – Claimant spent night in MACC lock up in deplorable conditions* E *– Claimant brought to court in handcuffs and paraded before media – Claimant claimed for false imprisonment, wrongful arrest and harassment – Whether claimant's claim essentially for malicious process or abuse of process – Whether there was malicious process or abuse of process*

***TORT:*** *Malicious prosecution – Claim – Claim against Public Prosecutor and its* F *deputies – Claimant charged at Sessions Court for offence of 'forgery' under s. 468 of Penal Code – Claimant acquitted and discharged by Sessions Court without defence being called – Public Prosecutor appealed to Court of Appeal but later withdrew – Whether there was malicious prosecution – Discretionary powers of Attorney General/Public Prosecutor – Federal Constitution, art. 145(3)*

G The plaintiff was investigated for bribery and was later arrested and detained by the Malaysian Anti-Corruption Commission ('MACC'). According to the plaintiff, (i) he was arrested at the MACC Headquarters, Putrajaya before being brought to the MACC, Kuantan. Throughout the process from Putrajaya to Kuantan, the plaintiff was harassed, threatened, intimidated and H induced to plead guilty. The plaintiff then spent the night in the MACC lock up which was in a deplorable condition; (ii) he was brought to the Sessions Court in handcuffs where he was charged for forgery, pursuant to s. 468 of the Penal Code. After the proceedings, he was again handcuffed and paraded before the media; (iii) he was later acquitted and discharged by the Sessions I Court without his defence being called as the prosecution failed to establish a *prima facie* case against him. Throughout the proceedings, the plaintiff suffered physiological and mental anguish, apart from anxiety, stress and

tension. To add salt to injury, the Public Prosecutor then filed an appeal to the Court of Appeal, prolonging the plaintiff's agony of having a charge still hanging on his head in spite of being acquitted. The appeal was, however, withdrawn. In the present suit, the plaintiff claimed for the torts of (i) false imprisonment, wrongful arrest and harassment against the MACC and its officers; and (ii) malicious prosecution against the Public Prosecutor and its deputies.

**Held (allowing claim for malicious process or abuse of process with costs and with damages to be assessed; dismissing claim for malicious prosecution):**

**(1)** The plaintiff was mistreated and abused as he was unnecessarily handcuffed tightly as though he was a hardcore criminal. This caused bruises on his hands. The medical report specifically mentioned 'handcuff injury' and 'happened during arrest by SPRM'. The action by the MACC was deliberate and, hence, malicious, as it was pre-planned. This was because the third defendant had, at the MACC Headquarters, Putrajaya, informed the plaintiff of his eventual charging the next day and that the media was already informed. This was an act of harassment and inducement to lure the plaintiff to plead guilty. The plaintiff was deliberately paraded around the court's lobby after he was charged, in the full view of the media. The next day, the print media reported the news, some displaying the plaintiff's full picture of being handcuffed with his full personal details. (paras 28, 30 & 31)

**(2)** During his arrest, the plaintiff was deprived of making preparations regarding his bails and medications. In the ensuing days, the plaintiff gradually experienced depressive symptoms such as loss of mood, insomnia, poor appetite, lethargy, withdrawal symptoms and persistent worries. The plaintiff suffered from mental health that led to a psychotic illness. The plaintiff's arrest, although legal, had an adverse publicity which was very damaging to his life and reputation as a businessman. The plaintiff had his ticket booked to fly to Chennai for business but, due to his abrupt arrest and detention, he was unable to attend and was not given the opportunity to inform the other parties of his inability to attend and participate in the meeting. Subsequently, he had lost that business opportunity. The plaintiff was in a great financial debt due to the loss of his business. He was eventually declared a bankrupt and even had to sell his house to release the bankruptcy proceedings. The ordeal also greatly affected the reputation of his family as a whole. His wife and children left him. In short, he lost everything. (paras 29, 30, 32, 33 & 36)

**(3)** Although the plaintiff did not use the word 'malicious process' and, instead relied on 'false imprisonment/malicious prosecution', the facts pleaded and the evidence relied on clearly showed that the plaintiff had pleaded facts sufficient to show the existence of the new tort of malicious process against the defendants. Therefore, the defendants were liable for the same. This was permissible as what was important was that the plaintiff had averred the facts in the pleadings which he was relying on and not the legal effect. The plaintiff had successfully proved his claims for wrongful imprisonment/arrest/harassment, which the court rebranded as 'malicious process or abuse of process', against the MACC and its officers with costs of RM40,000. (paras 6 & 46)

**(4)** The plaintiff's claim for malicious prosecution against the Public Prosecutor and its deputies were disallowed as this tort was simply unsustainable in Malaysia due to the discretionary powers accorded to the Attorney General/Public Prosecutor under art. 145(3) of the Federal Constitution. (para 6)

***Obiter:***

**(1)** In a claim of this nature, the court has to consider who the plaintiffs/victims are. One of the considerations in this case was that the plaintiff was investigated, and later arrested and detained, as a white-collar suspect/criminal holding quite a significant position in a company, in contrast to a hardcore criminal *ie*, drug addicts, gangsters and ex-convicts of hardcore crimes who may not be first-timers in being detained, locked up or charged. Therefore, the handling of the investigation agency on these two types of criminal suspects/accused should differ. Suspects being investigated/detained for white-collar crimes are normally, by nature, vulnerable as they are susceptible to harsh conditions and are weak; they can even faint the moment they are arrested as compared to a hardcore criminal suspect. It would be a gross injustice if the courts were to keep its eyes shut in not making such distinction. (paras 41, 43 & 44)

**(2)** Of late, certain white-collar suspects/detainees/accused were given extra special treatment where they were not handcuffed. This should not happen as it would give rise to 'legitimate expectation' by other similar suspects/accused in this category that they too would be entitled to be accorded the same treatment. This has bearing on the liability and the amount of compensation to be awarded. This could also give rise to an inference that few would get the breeze of being treated exceptionally, especially the VVIP suspects, while many non-VVIP white-collar suspects would be getting the pains as they are being denied of the same. (paras 51 & 52)

**Case(s) referred to:**
*Ellamah Ellapen v. Renganathan Komarasamy & Ors [1987] CLJU 81; [1987] 1 LNS 81 HC* ***(refd)***
*Everett v. Ribbands And Another [1952] 1 All ER 823* ***(refd)***
*Goldsmith v. Sperrings Ltd [1977] 2 All ER 566* ***(refd)***
*Goldsmith v. Sperrings Ltd & Ors [1977] 1 WLR 478* ***(refd)***
*Hill v. Hamilton-Wentworth Regional Police Services Board [2007] SCC 41* ***(refd)***
*Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin Ungku Mohamed [1998] 2 CLJ 340 CA* ***(refd)***
*Reeves v. Commissioner Of Police Of The Metropolis [2000] 1 AC 360* ***(refd)***
*Roy v. Prior [1971] AC 470* ***(refd)***
*Shanta Manickam v. Teik Joo Chan Sdn Bhd & Anor [2015] 8 CLJ 611 HC* ***(refd)***
*TN Metal Industries Sdn Bhd & Ors v. Ng Pyak Yeow [1995] CLJU 320; [1995] 1 LNS 320 HC* ***(refd)***
*Venture SKL Sdn Bhd v. Geonex (M) Sdn Bhd [2023] CLJU 885; [2023] 1 LNS 885 CA* ***(refd)***

**Legislation referred to:**
Federal Constitution, art. 145(3)
Penal Code, s. 468

*For the plaintiff - Kamalanathan Ratnam, Vinod Kamalanathan & Anis Amirah Zakaria; M/s Vinod Kamalanathan & Assocs*
*For the defendants - Syahriah Shafiee; SFC*

*Reported by Najib Tamby*

## JUDGMENT

**Ahmad Bache J:**

### Introduction

**[1]** The plaintiff had filed a suit against all the defendants for the tort of false imprisonment which entails wrongful arrest, wrongful detention and harassment and the tort of malicious prosecution.

### Brief Fact

**[2]** The plaintiff was earlier investigated for bribery, and was later arrested and detained by the Malaysian Anti-Corruption Commission ("MACC") and thereafter was charged under the authority of the Public Prosecutor for a "forgery" offence under s. 468 of the Penal Code.

**[3]** He was arrested on 19 March 2014 at MACC Putrajaya and detained and brought by car to Kuantan MACC and spent the night in a MACC lock up which was in deplorable condition. He was then brought to Kuantan Sessions Court in handcuff the next morning, where he was charged. After the proceeding, he was again handcuffed and paraded in front of the media that were awaiting him. According to him, throughout the process from Putrajaya to Kuantan, he was harassed, threatened, intimidated and induced (to plead guilty).

**[4]** On that day when he was charged, he did not plead guilty, hence eventually he was tried by the Sessions Court but was acquitted and discharged without his defence being called, as the prosecution failed to prove a *prima facie* case against him. Throughout this proceeding, he suffered physiological and mental anguish, apart from anxiety, stress and tension, to say the least. To add salt to injury, the Public Prosecutor then filed an appeal to the Court of Appeal, prolonging his agony of having a charge still hanging on his head, in spite of being acquitted but subsequently withdrew it.

**[5]** Hence this suit by the plaintiff for false imprisonment/wrongful arrest/harassment and malicious prosecution against all the defendants. (Technically, the tort of false imprisonment was against the MACC and its officers and the tort of malicious prosecution against the Public Prosecutor and its deputies).

**[6]** Regarding this civil trial, at the end of the trial, this court, on a balance of probability, found that the plaintiff had successfully proved his claims for wrongful imprisonment/arrest/harassment which this court had "rebranded" it as "malicious process or abuse of process" with cost of RM40,000. However, this court disallowed the claim for malicious prosecution against the defendants as the court ruled that this tort is simply unsustainable in Malaysia because of the discretionary power accorded to the Attorney General/Public Prosecutor under art. 145(3) of the Federal Constitution, amongst others.

**[7]** Dissatisfied with that decision, the defendants had filed an appeal to the Court of Appeal for abuse of process/malicious process. The plaintiff did not file an appeal regarding the claim for malicious prosecution.

**[8]** Herewith are the grounds for that decision regarding abuse of process (malicious process).

**Analysis And Finding Of Court**

**[9]** This suit by the plaintiff underscores the need to recognise the tort committed by officers of investigating and enforcement agencies in handling suspects/arrestees under their custody especially in cases involving white-collar crimes, for example corruption, CBT/deception *etc*, and the importance of exercising restrains and recognising humanity and human rights of white-collar crime suspects.

**[10]** This is so because in spite of their duty to act within the perimeters of the powers accorded to them, and that due protection to be accorded to the suspects under their custody and to ensure they are not harmed and to observe all the SOPs, however, cases of harm and abuses committed by these officers are quite prevalent.

*The Tort Of Malicious Process/Abuse Of Process*

**[11]** The tort of malicious process or abuse of process was introduced earlier in the United Kingdom, where the police were found to be liable for procuring arrests maliciously and without reasonable cause. This tort is newly introduced in Malaysia. It entails the torts of wrongful arrest/detention/wrongful imprisonment *etc*, and the lists are not closed. Apart from the United Kingdom, some other Commonwealth countries, for example, New Zealand, Australia and Canada have recognised it. As we will see later, the Supreme Court of Canada earlier had even introduced the tort of negligent investigation against the police, as they recognised that the torts of false imprisonment, misfeasance *etc*, do not provide an adequate remedy.

**[12]** It is distinct from the tort of malicious prosecution which applies against the Public Prosecutor. In the case of *Everett v. Ribbands And Another* [1952] 1 All ER 823, at p. 826, lines B to D, the court held:

> This action was known as an action for malicious process. It differed from malicious prosecution in that there was no need for the plaintiff to prove that he had been acquitted. There could be no question of acquittal, because the process issued without his innocence or guilt being decided at all. It issued, indeed, without his being heard at all. A modern parallel is the issue of a search warrant. If it is obtained maliciously and without reasonable and probable cause, an action lies.

See also *Roy v. Prior* [1971] AC 470.

**[13]** This tort prevails in a situation like the present case before the court whereby the claimant/plaintiff was rightfully and legally arrested but in the process, he was subjected to abuse, harassment, intimidation, inducement, and harm which had affected him not only physically but mentally and psychologically. (This court agreed that the arrest and detention was legal). Hence, he should be entitled to some form of redress or remedy for malicious process/abuse of process, as this court ruled that the arrest and detention were legal.

**[14]** In the English case of *Goldsmith v. Sperrings Ltd* [1977] 2 All ER 566, p. 574, lines E to F, the Court of Appeal, in a dissenting judgment, said this about the tort of abuse of process:

> What may make it (the legal process) wrongful is the purpose for which it is used. If it is done in order to exert pressure so as to achieve an end which is improper in itself then it is a wrong known to the law.

**[15]** This dissenting judgment was applied by our court in *TN Metal Industries Sdn Bhd & Ors v. Ng Pyak Yeow* [1995] CLJU 320; [1995] 1 LNS 320; [1996] 4 MLJ 567 at p. 583 (A to C). The judge held that the tort of abuse of process is distinct from malicious prosecution. It is applied in cases when a legal process has been misused to satisfy some other ulterior motives, thus:

> Where a legal process, the basis for which in itself could have proper foundation, has been perverted to satisfy some other motive such as extortion or oppression, an action will lie at the feet of a party that suffers the wrong. This is the tort of abuse of process. Unlike the tort of malicious prosecution, **the tort of abuse of process does not depend on the wrongful procurement of the legal process but in the misuse of the process however correctly it was obtained** ... (emphasis added)

**[16]** The Court of Appeal in the case of *Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin Ungku Mohamed* [1998] 2 CLJ 340; [1998] 2 MLJ 425, at p. 438 above also applied the dissenting judgment in *Goldsmith v. Sperrings Ltd* (*supra*). The court ruled that, if a legal process is abused for an ulterior motive, and harm is done to the person for which the process is initiated against, then the court can award damages against the wrongdoer.

**[17]** This position has been neatly summed up by Lord Denning MR in his dissenting judgment in *Goldsmith v. Sperrings Ltd & Ors* [1977] 1 WLR 478, where at p. 489 His Lordship said:

> In a civilised society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims.
>
> It is abused when it is diverted from its true course so as to serve extortion or oppression: or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer.

**[18]** Though a dissenting judgment, the principle enunciated by Lord Denning has been accepted as authoritative of what constitutes an abuse of process.

See: *Malaysia Building Society v. Tan Sri General Ungku Nazaruddin* (*supra*), at p. 435.

**[19]** This court subscribes to the view that suspects investigated and later arrested for corruption and other white-collar crimes are normally physically, psychologically and mentally weak, as they are not prepared to face the eventualities that await them compared to a hardcore criminal arrested for a hardcore crime. Some even fainted upon arrest. Matters will take a turn for the worst if they themselves are sickly or patients of chronic diseases or even not in the best of his/their health at the time of the arrest/detention. The situation will be exacerbated when he was then holding a signal position in society, for example, as a Head of a Government department, or a renowned politician or a CEO or a director of a well-known company, as his reputation will be immediately tarnished.

**[20]** The next thing that will befall on the arrestee/suspect will be that the news of his arrest will be a breaking news in the media. The next morning, he will be brought to court donned in the investigating agency's lock up attire (*eg*, SPRM in orange or the police in dark colour) in front of the many cameras awaiting him. This court takes judicial notice of this scenario.

**[21]** Have we ever thought what will happen to him thereafter. The court has taken judicial notice that firstly, he will be, with respect "vilified" by the media when the news of his arrest was and his identity revealed. The public will then "convict" him as they have already perceived him as having committed the (white-collar) crime, for example, corruption or CBT deception or forgery, *albeit* he was not even charged as yet or if he is charged on that day, he was not tried as yet.

**[22]** This court takes cognisance that at its worst, what will happen next to this suspect/detainee will be quite disastrous if not catastrophic, as what happened to the plaintiff in this case. Society and friends will shun away from him, wife and children will desert him, if he is a businessman, business associates will start to disassociate from him and that no prospect will do any business with him, to say the least. It does not stop here. Eventually, if he is a sickly person, his sickness will be further aggravated, and as night turns into day, very often he will enter into depression and thereafter may suffer from mental diseases. Some will suffer from "suicidal tendency syndrome" and the classic case of *Teoh Beng Hock*, who took his life whilst under the custody of SPRM/MACC is a classic example.

**[23]** Not to mention the loss of business and the loss of income that comes along with it.

**[24]** In the House of Lords case of *Reeves v. Commissioner Of Police Of The Metropolis* [2000] 1 AC 360, ruled the police have a duty to take reasonable steps to prevent a suspect/detainee from taking his own life. In the Supreme Court of Canada case of *Hill v. Hamilton-Wentworth Regional Police Services Board* [2007] SCC 41; [2007] 3 SCR 129, the Supreme Court even recognised the tort of negligent investigation against the police as the torts of false imprisonment, misfeasance and malicious prosecution do not provide an adequate remedy.

**[25]** This was what exactly happened to the plaintiff here, who was investigated for bribery, arrested, and finally charged by the MACC for forgery. His "agony" was more profound here as according to him, he was wrongly charged because as he was eventually acquitted by the trial court without his defence being called and that the Public Prosecutor who filed an appeal against the acquittal, to the Court of Appeal withdrew the appeal thereafter.

**[26]** To deny him of any redress or remedies will cause gross injustice to him against the factual background above.

The Evidence

**[27]** This court has perused all the evidence both oral and documentary and has considered the submissions by parties.

*The Breach*

**[28]** From the evidence, this court observed that the plaintiff was mistreated and abused whereby he was unnecessarily handcuffed tightly as though he is a hardcore criminal as this is another form of oppression. That has caused bruises on his hands. The medical report specifically mentioned "handcuff injury" and "happened during arrest by SPRM". (See p. 639 B2).

**[29]** The plaintiff, as like any businessman, already had his ticket to fly to Chennai the next day for business. Because of his abrupt arrest and detention, on 19 March 2014, he was unable to attend and was not given the opportunity to inform the other parties of his inability to attend and also to participate in the meeting. He has lost those business opportunities.

**[30]** This court ruled that, his arrest, detention and being charged on 20 March 2014, although legal, but the adverse publicity was very damaging to his life and reputation as a businessman. This has also greatly affected the reputation of his family as a whole. That had changed his life not for the better, thereafter. From the evidence adduced, this court found that this action by the defendants (SPRM) was deliberate and hence malicious as it was pre-planned. This was because the third defendant had at the SPRM Headquarters, Putrajaya, informed the plaintiff of his eventual charging the next day and that the media was already informed. This is an act of harassment and inducement to lure the plaintiff to plead guilty. In fact, during his arrest, he was also deprived of making preparations regarding his bails, medication *etc*, at that period of time. The plaintiff was brought to Kuantan handcuffed during the journey where he was charged at the Kuantan Sessions Court the next day.

**[31]** This court has had the opportunity of viewing the scenarios after he was charged, recorded by a TV station and aired on prime-time news slot that evening. This court observed that the plaintiff was deliberately paraded around the court's lobby after he was charged, in the full view of the media. The next day, the print media reported the news, some displaying the plaintiff's full picture of being handcuffed with his full personal details.

**[32]** The plaintiff felt humiliated as he strongly believed that he is innocent, unless otherwise proven. He was sick at that point of time and was denied medication. As a result of all the above, in the ensuing days, he gradually experienced depressive symptoms – loss of mood, sleep loss (insomnia), poor

appetite, lethargy, withdrawal symptoms, persistent worries regarding loss of business and his mind was consistently preoccupied with worries about the charge he was then facing.

**[33]** Following the charge and the humiliation he was facing, he lost everything. His wife and the two children left him. He was in great financial debt because of the losses in his business. He was declared a bankrupt. He had to sell his house to release the bankruptcy proceeding.

**[34]** Through some form of corroboration in certain circumstances are needed but in this case, this court ruled that the established facts above speak more eloquent than words. This court has had the opportunity to see his demeanour whilst testifying in court. He has to pluck some courage and confidence to testify, and occasionally, he broke down but tried hard to compose himself. Be that as it may, this court ruled that he is a credible witness and there was no reason for this court to rule otherwise.

**[35]** This court also had considered judicial notice of the surrounding circumstances and the circumstantial evidence in this case.

**[36]** Evidently, he suffers from mental health – that led him to psychotic illness. He also suffered from Anhedonia (see report p. 667), which is associated to mental disorders, including depression.

**[37]** The following is the extract of the plaintiff's statement/evidence:

S39: **Boleh terangkan kejadian-kejadian yang berlaku kepada kamu setelah ditangkap oleh SPRM?**

J39: Atas arahan Defendan Keempat dan/atau Defendan Ketiga, Pegawai-Pegawai Defendan Kelapan membenarkan saya membuat hanya satu panggilan telefon sahaja bagi memaklumkan keluarga bahawa saya telah ditangkap oleh SPRM. Defendan Ketiga seterusnya telah mencabar saya untuk saya dapatkan "cable" (kenalan/rakan berpengaruh) agar boleh terlepas daripada pertuduhan yang bakal dihadapkan kepada saya.

**S43: Semasa kamu dibawa ke Mahkamah, apakah tindakan-tindakan Pegawai-Pegawai SPRM terhadap kamu?**

J43: Semasa menunggu untuk kes saya dipanggil oleh Hakim Mahkamah Sesyen, Defendan Ketiga juga telah cuba menghasut dan/atau secara tidak langsung untuk mempengaruhi saya untuk mengaku bersalah dan bahawa sekiranya saya mengaku bersalah, hanya hukuman denda sahaja yang akan dikenakan terhadap saya. Tindakan Defendan Ketiga tersebut seolah-olah menganggap saya sememangnya bersalah tanpa dibicarakan dengan adil terlebih dahulu.

> Saya juga telah digari dengan ketat sehingga sukar untuk bergerak dan mengambil sapu tangan untuk mengelap muka dan hidung saya kerana saya sedang mengalami selsema dan batuk yang teruk. Sementara menunggu proses ikat jamin selesai, saya berada di bilik saksi/bilik menunggu Mahkamah. Di situ, seorang Polis pengawal Mahkamah bersimpati melihat keadaan saya telah meminta agar gari saya dibuka atau dilonggarkan kerana saya kelihatan tenang dan tidak berbahaya atau mendatangkan ancaman, namun Polis pengawal Mahkamah tersebut telah ditengking dengan keras oleh Pegawai pengiring SPRM tersebut.

**[38]** The situation above underscores the need for transparency to prevail in all processes of investigation by the investigating and enforcement agencies' officers and that the rule of law to be strictly observed and that they should not abuse the legal process in discharging their duties. As public servants, they are stewards of public trust and they have to ensure not to erode this trust.

**[39]** By not allowing this claim, when a certain remedy and redress are wanting, a wrong message could be drawn *ie*, we are condoning such acts.

*Eggshell Skull Rule*

**[40]** This court has taken cognisance that in the realm of the law of torts, there is a doctrine called "eggshell skull rule", which means the defendant takes the victim as they find them. It means if the plaintiff is injured or sick and the injury is exacerbated due to a plaintiff's particular susceptibility to a certain health condition, the defendant is still liable for the full injury.

**[41]** It follows that in a claim of this nature, the court has to consider who the plaintiffs/victims are. One of the considerations in this case is that as the plaintiff was investigated (later arrested and detained) as a "white-collar" suspect/criminal holding quite a signal position in a company as contrast to a hardcore criminal, hence, the handling of the investigation, the arrest, the detention by the investigation agency on these these two types of criminal suspects/accused should differ. As mentioned earlier, suspects being investigated/detained for white-collar crimes are normally by nature vulnerable as they are susceptible to harsh conditions and, hence, by nature are weak. He can even faint the moment he is arrested as compared to hardcore criminal suspect. It will be more profound if he holds a signal position as CEO or director of a company or Director General of a Government department *etc*.

**[42]** They are normally investigated by MACC/SPRM.

**[43]** The hardcore category might be drug addicts, gangsters, ex-convicts of hardcore crime *etc*, who themselves are not first-timers being detained/locked up/charged.

**[44]** It will be a gross injustice if the courts were to keep its eyes shut in not making such a distinction. For instance, a Director General of a Government department or a CEO of a company was arrested because of some suspected bribery activity and was remanded. The news about his arrest/detention will be publicly made known (because of his signal position). The after-effect will be very damaging and devastating. He will lose his job and will lose his reputation which could give rise to friends/society shunning away from him. Worst of all, the family will desert him. Hence, the court will have to take this into consideration in determining liability and assessment of damages. What is more, the plaintiff in this case was sick at the time of the arrest and the charging and was under medication.

**[45]** This by no means, would mean that the court is practising double standards but the law of torts permits it under the doctrine of the "eggshell skull rule".

Can The Plaintiff's Claim Be Sustained When He Did Not Specifically Plead In His Pleading/Statement Of Claim?

**[46]** This court opined that although in this case, the plaintiff had not used the word 'malicious process' but relied on "false imprisonment/malicious prosecution", this court observed that the facts pleaded and the evidence relied on, show clearly that the plaintiff has pleaded facts sufficient to show the existence of the new tort of malicious process against the defendants, and therefore the defendants are liable for the same. This is permissible, because what is important is that the plaintiff has averred the facts in the pleadings which he is relying on, and not the legal effect.

**[47]** In the case of *Shanta Manickam v. Teik Joo Chan Sdn Bhd & Anor* [2015] 8 CLJ 611; [2015] 11 MLJ 721, it was held that whilst it was true that the term "occupier's liability" was not used in the statement of claim, it must be remembered that a pleading needs only to aver the facts relied upon and need not state the legal effect of the facts.

**[48]** In *Venture SKL Sdn Bhd v. Geonex (M) Sdn Bhd* [2023] CLJU 885; [2023] 1 LNS 885; [2023] MLJU 987, in a termination of agreement case, the respondent contended that he had stored the dismantled 'palong' and the machineries of the appellant, but led no evidence where it was stored. The appellant claimed damages for unlawfully removing and disposing of the 'palong' and the machineries. Although the appellant did not employ the term 'conversion', however the pleaded facts and the evidence led to substantiate a case for conversion. The High Court disallowed the claim but the Court of Appeal set aside the judgment of the High Court and allowed the claim for conversion even though the claim for conversion was not pleaded.

**[49]** Put it in another way, the statements of claim might not have mentioned particulars exactly to "abuse of process/malicious process" but the plaintiff did plead or allude to facts that pointed to abuse of process/ malicious process. Hence, the defendants cannot be said to be caught by surprise.

**[50]** In the case of *Ellamah Ellapen v. Renganathan Komarasamy & Ors* [1987] CLJU 81; [1987] 1 LNS 81; [1988] 3 MLJ 121, the Court of Appeal held that although perhaps the pleadings are wanting in the sense that they do not set out the detailed particulars of fraud, the evidence clearly shows the instances of fraud has occurred. The court ruled that though the particulars might be insufficient but it should not be a bar to the plaintiff's claim. Further, the defendants were not caught by surprise.

MACC Practices Double Standards?

**[51]** This court observed that of late, certain white-collar suspects/ detainees/accused were given extra special treatment whereby for example, they were not handcuffed *etc*. This should not have happened because it has given rise to "legitimate expectation" by other similar suspects/accused in this category (white-collar), that they too be entitled to be accorded the same treatment. This has bearing on the liability and amount of compensation to be awarded.

**[52]** This can also give rise to an inference that incidents that few will get the breeze of being treated very exceptionally, especially the VVIP suspects, and many non-VVIP white-collar suspects will be getting the pains as they are being denied of the same.

**Conclusion**

**[53]** This new approach by the court must be recognised and is timely as it is built on the foundation of fairness, reasonableness, justice and respect to this group of vulnerable suspects/detainees. This resonates with the application of the eggshell skull rule and the call that the time has come for society and officers of investigation and law enforcement agencies (like MACC and police) to recognise the rights of these vulnerable suspects/ arrestees as they are, at the extreme of the spectrum are susceptible to suffer from mental health which can cause them to even take away their own life (see *Teoh Beng Hock*'s case). The Ministry of Health once declared that from surveys conducted, four in every ten ordinary Malaysians, suffer from some form of mental health issues and remedial measures are to be taken to arrest this problem. It will be more profound to this group of people.

**[54]** Further, this group of vulnerable suspects/detainees, especially and the public as a whole, view courts as a platform where their rights could be protected. By assuring that rights, will make the public to repose trust in our

court system as a fair and effective forum to enforce their rights even though as an accused/detainee. What is more, for the plaintiff here, he was not found guilty after all.

**[55]** To deny the plaintiff of this claim will cause gross injustice to him as, amongst others, his reputation is now beyond repair and the society has convicted him even though the court has acquitted him. He is now suffering especially mentally and physiologically.

**[56]** Notwithstanding the decision of this court, the MACC and the police are to be commended for their commitments in discharging their professional duties of investigation but have to take into consideration of the welfare of the person/s investigated by them under their custody as anything done not within the legal perimeter of their powers/scope of duty will give rise to a civil claim in the area of torts as in this case against them.

**[57]** For the foregoing reasons, the claims of the plaintiff are allowed with costs of RM40,000. Damages are to be assessed at a date to be fixed.